

Claims 20-26, 28, and 30-40 are rejected under 35 USC § 102(a) as being anticipated by Cano (U.S. Patent No. 5,860,190). Cano discloses an expanded implement handle grip which may include optional features which allow the expanded implement handle to have improved function. Cano does not disclose a toothbrush having the features of the instantly claimed invention.

It is the position of the Office that Cano teaches various embodiments of a toothbrush (Figs. 5, 8, 9, 10, or 12) of elongate form, comprising bristles wherein on a flat horizontal support, there is at least one position of stable equilibrium in which the longitudinal direction of the brush is essentially parallel to the support and the bristles lie at a distance from the support and extend towards the support **(if a user orients the bristles in this downwards direction)**. In the instantly claimed invention, the bristles are oriented toward the support without any action of a user. This downward orientation of the bristles actually characterizes the stable position(s) of equilibrium, which position is adopted spontaneously.

Cano discloses a handle grip having at least one stable equilibrium position. On a flat surface, the grip containing an implement may lie in a horizontal position. The Applicants submit that, although the grip could contain a toothbrush, Cano does not disclose in which direction to orient the bristles of the toothbrush and nothing in Cano indicates that the bristles are oriented in a specific direction, i.e., the bristles extending towards the support. Moreover, the implement of Cano may be oriented in an infinite number of directions. Thus, the Applicants submit that Cano does not disclose a toothbrush wherein the position of stable equilibrium in which the bristles extend towards the support is/are the only position(s) of stable equilibrium of the toothbrush, and, therefore, the disclosure of Cano does not anticipate the instant invention. Absent such express

disclosure of each claim element, the Office has not made out the anticipation basis.

Claims 20, 22-25, 27, 31, 32, and 34-36 are rejected under 35 USC § 102(b) as being anticipated by Switzerland 180027. Switzerland 180027 discloses a toothbrush of elongate form wherein on a flat horizontal support there are several positions of equilibrium. In one position of equilibrium, the bristles extend toward the support (figure 2); however, this position is not the only position of stable equilibrium. There are three other positions of stable equilibrium in which the bristles do not extend toward the support (figures 1 and 3). This is in contrast to the instant invention in which the only position of stable equilibrium is that in which the bristles extend toward the support, which position is adopted spontaneously.

It is the position of the Office that Claim 20 does not preclude the presence of other types or positions of possible "equilibrium" of the toothbrush of the instant invention. Claim 20 states that "the position(s) of stable equilibrium in which the longitudinal direction of the brush is essentially parallel to the support and the bristles lie at a distance from the support and extend toward the support is/are the only position(s) of stable equilibrium of the brush on the support." The Applicants respectfully submit that this wording indicates that there is not any position(s) of stable equilibrium other than position(s) where the bristles extend toward the support. Thus, Claim 20 clearly precludes other positions of possible "equilibrium" of the toothbrush. Absent such express disclosure of each claim element, the Office has not made out the anticipation basis.

Claims 20-24, 29-32, 37, and 38 are rejected under 35 USC 103(a) for obviousness based on Lodato (U.S. Patent No. 5,956,796) in view of Switzerland 180027. Lodato discloses a toothbrush which has only one position of stable equilibrium when placed on a flat horizontal support. In the position of stable equilibrium disclosed in Lodato, the bristles extend opposite to the support. The toothbrush disclosed in Lodato teaches away from the instant invention in that it describes the invention as addressing the concern of potential contamination by providing "a self-righting toothbrush that locates the head of the toothbrush (i.e. the portion of the toothbrush with bristles) away from the flat surface upon which the toothbrush rests." The instant invention provides a toothbrush to enhance hygiene (i.e., addressing the concern of potential contamination) by providing a toothbrush in which the only position(s) of stable equilibrium is/are position(s) where the bristles extend toward the support when the brush rests on a support. The Office rejection for obviousness is contradicted by the Office's cited disclosure. There is simply no basis for the Office to hypothesize that the author meant something other than the express disclosure.

Switzerland 180027 discloses four different positions of stable equilibrium. In one position of equilibrium, the bristles extend toward the support (figure 2). In the other three positions of equilibrium, the bristles do not extend toward the support (figures 1 and 3). In particular, in Switzerland 180027, the toothbrush may be placed with an initial position on the support such that the toothbrush spontaneously adopts a stable position in which the bristles do not extend toward the support (figures 1 and 3). In contrast, according to the instant invention, when the toothbrush is placed in any initial position on a flat horizontal support, the toothbrush spontaneously adopts position of stable equilibrium in which the bristles extend toward the support. According to the

instant invention, this is the only position of stable equilibrium of the toothbrush on the support. It is the position of the Office that "it would have been obvious to one of ordinary skill in the art to have modified Lodato's bristle arrangement such that the bristles extend towards the support as suggested by Switzerland 180027 for the purposes of preventing the bristles from coming into contact with other objects or just to simply permit improved drainage of water by gravity from the bristles after usage.

The applicants respectfully submit that one skilled in the art would have dismissed Switzerland 180027 because according to the teaching of Lodato, the toothbrush disclosed in Switzerland 180027 in which the bristles are oriented toward the support would increase the risk of potential contamination. Thus, the teachings of Lodato and Switzerland 180027 are incompatible. The Office has no basis to combine two references which contradict each other on their face. It is the express preference of Lodato to describe an invention which performs a different function in a different way. The Office may not disregard the express teaching of the reference.

Moreover, one skilled in the art would find it difficult to combine the teaching of Lodato and Switzerland 180027 because the teachings of the two references are not compatible. Lodato discloses a toothbrush wherein the only stable equilibrium position is provided by a ballast (24) located in the handle (14) of the toothbrush (as shown in the figures). In contrast, Switzerland 180027 discloses a toothbrush in which the stable equilibrium positions are provided by the particular shape of the toothbrush rather than by a ballast. In order to combine the teachings of these two references, one skilled in the art would attempt to make a toothbrush having both a ballast and a particular shape to provide a position of stable equilibrium.

It is the position of the Office that one skilled in the art would have modified the bristle arrangement in Lodato to obtain a position of stable equilibrium in which the bristles extend toward the support as illustrated in figure 2 of Switzerland 180027. The Applicants submit that there is nothing to suggest that if one skilled in the art were to select one or more position(s) of stable equilibrium among the four positions disclosed in Switzerland 180027, he would select the position in which the bristles extend toward the support. On the contrary, Switzerland 180027 does not favor any particular position of stable equilibrium among the four possible positions, and, according to Lodato, the position of stable equilibrium in which the bristles extend away from the support decreases the risk of contamination from the support. Therefore, following the teaching of Lodato, one skilled in the art would select the only position in Switzerland 180027 in which the bristles extend away from the support (figure 1 of Switzerland 180027). Thus, the applicants submit that the combined teachings of Lodato and Switzerland 180027 do not render the instant invention obvious.

* * * * *

Accordingly, entry of the present amendment, reconsideration of all grounds of objection and rejection, withdrawal thereof, and passage of this application to issue are all hereby respectfully solicited.

It should be apparent that the undersigned attorney has made an earnest effort to place this application into condition for immediate allowance. If he can be of assistance to the Examiner in the elimination of any possibly-outstanding insignificant impediment to an immediate allowance, the Examiner is respectfully invited to call him at his below-listed number for such purpose.

Allowance is solicited.

Respectfully submitted,
THE FIRM OF HUESCHEN AND SAGE

By: 
G. PATRICK SAGE

Dated: October 7, 2004
Customer No.: 25,666
500 Columbia Plaza
350 East Michigan Ave.
Kalamazoo, MI 49007-3856
(269) 382-0030

Enclosure: Fee for Two (2) Month Extension and Postal Card Receipt

**THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FURTHER OR
ADDITIONAL FEES WHICH MAY BE REQUIRED (DUE TO OMISSION,
DEFICIENCY, OR OTHERWISE), OR TO CREDIT ANY OVERPAYMENT, TO
DEPOSIT ACCOUNT NO. 08,3220.**